

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1600 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

3 to 5 No

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RANUJA COOPERATIVE HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

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Appearance:

MR YF MEHTA for Petitioner

MR. UA TRIVEDI, AGP Respondents

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/09/98

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ORAL JUDGEMENT

1. Rule. Learned AGP Mr. U.A. Trivedi waives service of rule on behalf of respondents.

2. The Competent Officer under the Urban Land (Ceiling and Regulation) Act, 1976, disposed of Form No.1 filed by the Society on 24.2.1983 by holding that there is no excess land possessed by the petitioner society. The order was the subject matter of revision under Section 34 of the Urban Land Ceiling Act. The State Government affirmed the order of the competent authority. After the State Government has exercised its power on revision and affirmed the order of the competent officer, some proceedings held under the Bombay Land Revenue Code were in the progress, the Collector, Ahmedabad on 13.6.1995 again sought to invoke the jurisdiction of the State Government under Section 34 to review order passed in revision. The State Government entertained the application and reviewed its own order dated 23.5.1994 by modifying the original order of the competent officer.

3. This Order dated 26.12.1996 is under challenge in this petition. The petitioner urges that the tribunal in entertaining review application has acted without jurisdiction inasmuch as the State Government had no jurisdiction to entertain a review petition against its own order under the ULC Act.

4. Learned counsel for the State Government urges that power to review its own order exist under Section 34 of the Act. The power which enables the State Government to 'revise any order passed under the Act', includes also order under Section 34. Term revision has been used in wide perspective to include any order under the Act including order made in revision of any order under the Act under Section 34.

5. The issue is no more res integra. So far as this court is concerned, it stands concluded .

6. Attention of the court is invited to the decision of this Court in the case of THAKERSHI P. PATEL v. STATE OF GUJARAT, reported in 1995 (1) GLH 216, wherein this court has held that even though Section 34 provides that the State Government may examine any order under the Act, that power is recognised and labelled by the Legislature itself as power of revision and not of review. If the Legislature wanted any express power of review, it would have used that expression for enabling the Government to review own order and not revision of orders. Section 34 cannot be construed to confer any right of review. Section 45 is the power of correcting

clerical error, arithmetical mistake or error arising out of slip of pen or omission. Neither Section 34 nor Section 45 give any power in taking the proceedings under Section 34 to revise its own order. The State Government is, therefore, lacking in the power in taking the proceedings under Section 34 to revise its own order.

7. The ratio of the above decision applies to the facts of the present case on all fours.

8. Apart from the aforesaid position, it is also clear from reading Section 34 that it refers to the power of the State Government only to revise orders made by the subordinate authorities under the Act. The power of revision has been conferred in respect of such orders against which no appeal has been preferred under Section 12, or Section 30, or Section 33. Power enables the State Government to satisfy itself as to the legality and proprietary of such orders against which no appeal has been preferred under Section 12, or Section 30 or Section 33. All orders referable to Secs. 12, 30 and 33 are of an authority which is subordinate to State Government. The position is not that order is revisable when no appeal is provided for. In fact provision is an alternative to appeal where one has failed to exercise such right. This supports the view that power under Section 34 has been conferred to revise the orders made by subordinate authority and not to review its own order.

8. In view of this the State Government must be held to have acted without jurisdiction. The order under challenge deserves to be quashed on this ground alone.

9. In the result, the petition succeeds. The impugned order dated 26.12.1996 is quashed. Rule is made absolute. There shall be no order as to costs.

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